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Robert Randall

and

The Le Breton Flats

BY

HAMNETT P. HILL

ROBERT RANDALL

AND

THE LE BRETON FLATS

An account of the early legal and political controversies respecting the ownership of a large portion of the present City of Ottawa

BY

HAMNETT P. HILL

Published by
JAMES HOPE & SONS, LIMITED
OTTAWA

F5547 .89H6

Entered according to Act of the Parliament of Canada, on the 23rd day of May, 1919, in the office of the Minister of Agriculture, by HAMNETT P. HILL.

J. Walker.
1946.

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PREFACE.

In apologizing for my temerity in presenting this little volume to the public I bespeak their kind indulgence for its obvious shortcomings. My intention in studying the troubles and misfortunes of Robert Randall, from whom a cruel fate robbed the honour of being one of the builders of the future Capital of Canada was not that I might be rated as a local historian, but merely to afford myself the pleasure of drawing aside the curtain which was hiding what had happened in the backwoods bordering on the Chaudiere water power before the days of Colonel By. My friends to whom I mentioned the story have urged me that it should be made available both to those who take an interest in the early history of the Capital of Canada as well as to those whose interest might be aroused by having the narrative brought to their attention.

Not being endowed with a facile pen I regret that I have not done justice to the facts I have endeavoured to present. My feelings in this regard are similar to those which prompted the late William Pittman Lett to insert the following lines in his "Recollections of Bytown":

> "And O ! deal leniently with me while I try
> To bring the vanished past before your eye,
> When all around the spot on which I stand
> Was trackless forest and primeval land,
> The "Barrack Hill" a wilderness all o'er
> And Lower Town to Rideau's ancient shore
> A gloomy cedar swamp, the haunt of deer
> In which the ruffled grouse drum'd when
> spring was near;
> While here and there a great pine on high
> Towered with its spreading branches to the sky."

HAMNETT P. HILL.

Ottawa,
April 22nd, 1919.

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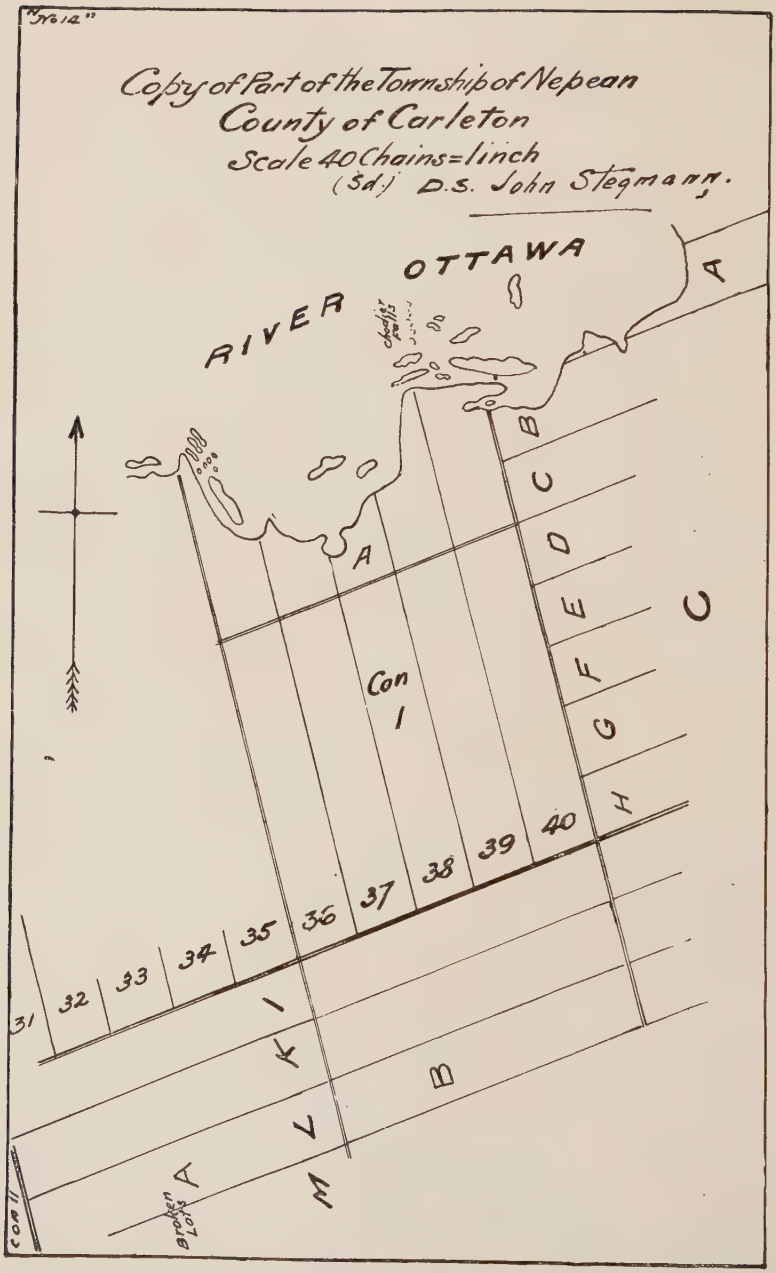


Copy of Original Plan of a portion of the Township of Nepean now the Western Section of the City of Ottawa

ROBERT RANDALL AND THE LE BRETON FLATS

CHAPTER I.

THE GRANT.

Robert Randall the Grantee from the Crown of the Chaudiere water power and the land adjoining was of promising temperament, restlessly active, indomitably courageous and optimistic. In 1798, then a young man of respectable connection, large pecuniary resources and good credit, he left his quiet home in Maryland and migrated to Upper Canada, with the intention of engaging there in various enterprises. He settled near Niagara Falls. There he erected his forge and commenced the manufacture of cast and bar iron. He was the first manufacturer of wrought iron in Canada. Shortly afterwards he purchased a large grist and saw mill at Niagara Falls, known as the Bridgewater Works. In a petition to Sir Francis Gore in 1809, now on fyle in the Archives at Toronto, Mr. Randall states that the first wheat flour manufactured in Upper Canada for the European Market was ground in his Bridgewater Mills. Besides his establishment at Niagara Falls Mr. Randall had a large mercantile business at Cornwall, where, being a devout churchman and of progressive character, he built the church for the adherents of the Church of England to worship in.

Randall was essentially a pioneer and doubtlessly his curiosity and interest in the great hinterland to the north was aroused by what he heard on his visits to Cornwall. At this period there was not a single settler in what is now the County of Carleton. In fact it is doubtful if there was anyone residing at any distance north of the St. Lawrence River. There were small settlements of the United Empire Loyalists at what are now Prescott, Brockville, Cornwall, Gananoque and Kingston, but these were mere hamlets in the neighborhood of which the hardy exiles from the United States had cleared the forests and were struggling to eke out an existence on their farms. From this settlement north to the banks of the Ottawa stretched an unbroken forest.

On September 1st, 1793, instructions had been issued by the Government at York (now Toronto) to Deputy Surveyor John Stegmann to survey certain townships, which, at that time, were lettered "A", "B", "C" and "D", etc., in the northern portions of the Counties of Leeds and Grenville as they then existed, there being at the time no County of Carleton. Township "D" subsequently came to be called the Township of Nepean. There is an undated plan of this Township in the Department of Lands, Forests and Mines at Toronto by this Surveyor. Apparently, however, the Township was originally surveyed either during the winter of 1793, or the Spring of 1794. There is a legend that Mr. Stegmann was drowned in the Rideau River while making the survey.

In 1807 Randall made an exploring trip accompanied by Indians from Kingston up the Cataraqui River, through the maze of lakes in the interior and down the then turbulent and rapid Rideau River to the banks of the Ottawa. Randall had a keen eye to the future, and this trip was probably made with a view to locating land which might some day become valuable.

On his way down the Rideau he was attracted by the water power at the end of Long Island (called the Long Island Falls near the mouth of the River Jock), and he subsequently acquired four hundred and fifty acres of land there. This power was effaced when Colonel By built dams for the canal twenty years later.

Upon arriving at the Chaudiere Falls on the Ottawa, he readily perceived their value. The land abutting on the Falls in the Township of Nepean had been subdivided into lots Nos. 39 and 40 in Broken Concession "A" and corresponding lots lay immediately south of these, known as Lots Nos. 39 and 40 in Concession 1. Lot No. 40 in Concession 1, and Lot No. 40 in Concession "A" with which this article deals, comprised that portion of the present City of Ottawa, which may be roughly described as bounded on the east by Bronson Avenue, on the south by Carling Avenue, on the west by Booth Street and Bridge Street, and on the north by the Ottawa River.

Returning to Cornwall, Mr. Randall wrote to the legal firm of Boulton & Boulton at York, instructing them to apply on his behalf for the land abutting on the Chaudiere Falls, and for

the neighbouring islands. This letter is well worth reproduction,—

"Cornwall, 8th October, 1807.

Dear Sir,—

I enclose you two petitions, one for two hundred acres of land, agreeable to the regulations of the Province, providing for settlers; also one for a lease of Lot No. 39 in the first Concession (or front) of the Ottawa River, opposite to the Falls, known by the name of the Chaudiere, in the Township of Nepean, a short distance above the mouth of the River Rideau. The petition for two hundred acres as a settler, I have left a blank for you to fill up, agreeable to the instructions hereby given. If Lot 39 is a reserved lot, as I presume it is, and if there be a broken front, which I also think there is, and likewise a broken front to lot No. 38, lying adjoining No. 39, on the upper side, and should there also be a broken front on No. 40, adjoining No. 39, on the lower side, provided these fronts will be sufficient to fill my claim for two hundred acres, you will please to lay my petition upon the said broken fronts, comprehending all water privileges as far as the channel of the Ottawa or Grand River including all lands between the channel of said river and the banks of the main, from the west side of lot 39 running ten chains below the east line of Lot No. 40.

This, Sir, requires an explanation. There are four small islands at or near the Chaudiere Falls which lay so situated as to make them actually necessary to be procured for the purpose I have in view, which is to extend a dam, from the main bank to the upper islands lying at the Falls and taking the water between the main and said islands for the purpose of a grist or saw mill. The Ottawa River is very narrow at the Chaudiere Falls, therefore you will find the distance to be but short from the main to the channel of the river, and the quantity of acres which those islands contain cannot exceed twenty, but the Government not having it in their power to grant islands, makes it necessary to apply in this way, as Government can make a grant in this way that will be as effectual as if the islands were expressed in the deeds, but should the broken fronts of lots Nos. 38, 39 and 40, not

be sufficient to fill my claim, you will please to lay the claim upon the broken front let there be what quantity there may, and let my petition lay open for the deficiency to be laid in some other place. Provided that lot No. 39 should not be reserved for clergy, and that lots Nos. 38 and 40 should not be granted; please to lay my claim upon as much of the fronts as the same will cover, comprehending the privileges of the waters of the river and bound by the channel of the said river as already described, provided there should not be broken fronts to the aforesaid lots, and that 38 and 40 have already been granted, and should No. 39 be reserved for the benefit of the Crown, endeavour to prevail on Government to allow my claim to cover it; with the privilege of said waters and islands as described. But should Government not allow my claim to cover No. 39 and should the said Nos. 38 and 40 be already granted, as likewise there may not be any broken fronts; in that case take out a lease for me for No. 39, and endeavour to get a grant from the bank of the west line of No. 39 running to the channel of the river, ten chains below the east line of Lot No. 40, to the main bank including all lands, which is those small islands. I have enclosed my bond, together with my bondsmen, for my annual payment of the lease. You will also call upon Captain Farquharson for my letter directed to Thomas B. Gauf, Esquire, who, Mr. Chewitt says was at New York and had not returned when he left home. You will get Captain Farquharson to open my letter favoured by Mr. Burns to Mr. Gauf, in order that you may get my certificate as having taken the oaths required by Government. Should Captain Farquharson not be in possession of my letter to Mr. Gauf, please call on Mr. Burns, (I think his Christian name is William) I had the pleasure to see him at Cornwall. As Government is knowing to my arduous undertaking at the Bridgewater Works near the Falls of Niagara, and my perseverence in this kind of business, I flatter myself the Governor in Council will be disposed to encourage me all in their power in commencing business at the Chaudiere Falls on the Ottawa River. It will be the means of settling the wild lands on that river, that is at this present a perfect

wilderness, not one settler inhabiting the country; it will be the means of settling the wild lands upon that line of the Province which I conceive to be much required. The fees required in getting out my patent, if in your power to procure one, I shall pay to your order in Cornwall on demand. You will greatly oblige me to hasten the business as much as in your power and forward the deed and lease by the first safe opportunity that may offer, as I am very desirous to get out my timber and build my dam before the freezing of the waters.

I fully expected my letter would have found my friend Mr. Gauf in York, on Mr. Burns' arrival, and expected at all events to have heard from my business by you when last down at Cornwall Court, at my return from Quebec. The acquaintance which I have had the honour to have with you makes me trust you will use your interest for me. You can observe to the Governor, that the Parish at Cornwall must also feel itself under a small compliment for having built the Church.

Relying upon your usual goodness I subscribe myself your most obedient and humble servant,

ROBERT RANDALL.

D'Arcy Boulton Esquire".

The firm of Boulton & Boulton was composed of Mr. D'Arcy Boulton and his son, Mr. Henry J. Boulton. As will appear subsequently, the latter was responsible for the legal and political struggles and controversies in which Randall became involved.

Mr. D'Arcy Boulton was the son of an English Barrister who emmigrated to Canada in 1797 and settled in Brockville. In 1802 the scarcity of lawyers in Upper Canada was so great that the Assembly passed an Act authorizing the Government to appoint no more than six persons as lawyers as, according to their probity education and condition in life, it should deem fit and proper to practice the profession of law in the Province. Mr. D'Arcy Boulton was one of those selected, and the choice was a happy one, as he was well qualified and rose rapidly in the profession, eventually being appointed a Judge of the Kings Bench.

The islands referred to in Randall's letter are the four islands on which now are erected Mr. J. R. Booth's mills, and the other industries at the Chaudiere. The character of the channel between these islands has now been completely altered by the construction of the slides and the dams. At the time of Randall's application, the distance from the main land to the "rocky clumps" or islands was about sixty feet and except in the time of high water the passage was almost dry. Randall's idea, as explained in subsequent letters, was that by extending a dam from the main land to one of the nearest islands, and throwing a wing dam out into the main channel of the river, he would command a sufficiency of water for the purpose of developing power. Except for building works of this character, Randall did not consider that a grant of the main land and the islands would be worth possessing, but by developing the power in the manner he had in mind, a large settlement would spring up in a part of the Province which at that time was totally uninhabited.

Randall's letter to Boulton was written on the 8th of October, 1807, but it was not until the following July that he received his answer. In the reply, reference was only made to the lots in the First Concession back from the river, which were not the lots Randall was desirous of obtaining. This apparently annoyed him, as he immediately wrote another Solicitor, Mr. Jonathan Rudsdel, to call at the Executive Council Office in Toronto and ascertain if his petition had been filed, and also ascertain if the lots which he had asked Mr. Boulton to obtain for him had been acquired by anyone else, and if so, by whom, and if the date of the application had been since the date of his letter to Mr. Boulton, he was to remonstrate to the Governor and explain the facts, and endeavour to have the grant reversed. Between Mr. Boulton and Mr. Rudsdel, the application was properly made.

The Officials in the Land Office were careful and dilatory. They expressed doubt as to whether Randall's dam would interfere or obstruct the passage of canoes or boats navigating the river. Their minds were set at rest in regard to this by Mr. Wm. McGillvray, the chief agent of the North West Company, who reported to them that no such damage would occur.

Information was also required, in the form of affidavits, respecting the timber on the lot, the reason of this being that if there was oak or pine on the banks of a river, the Crown reserved it for the navy. Serious difficulty arose over the question whether the islands should be considered as part of the broken front. This proved a stumbling block and the matter dragged for some time. Judging that if he owned the main land, the islands would be of no use to anyone else, Randall, in February 1809 accepted a patent for lots 38 and 40, together with broken fronts, and a lease for lot No. 39 and the broken front between it and the river. In this way he became possessed of a block of land which is now bounded on the east by Bronson Avenue, on the south by Carling Avenue, on the west by Bayswater Avenue, and on the north by the Ottawa River.

Immediately on obtaining the grant of lot No. 40, Randall erected a small building in the little bay below the Falls where the water works aqueduct now empties into the river, (later known as Richmond Landing), and made preliminary arrangements to commence operations. He expended probably £500 upon plant and equipment.

Randall was now at the height of his prosperity. His indefatigable industry and perseverence had made him one of the large land owners in the Province. At this time, in addition to owning 950 acres of land at the Chaudiere, he had 450 acres abutting on the water power on the Rideau at the mouth of the Jock, 1200 acres on the south side of the river Welland, near Niagara, 400 acres in the County of Dundas, 400 acres in the County of Leeds and his mercantile establishment at Cornwall, and his flour and grist mill, and iron-works, known as the Bridgewater Works, at Niagara Falls.

Everything indicated that with the rapid growth of population in the Province great wealth would assuredly come to him. Fortune had smiled on him, but the smile was about to change to a frown.

In connection with his mercantile and milling business, it had been necessary for him to give very extensive country credits, and on the failure of his British and Quebec agents, Messrs. Burton & McCullough, he was obliged shortly after obtaining the grant of the Chaudiere property to surrender his

Bridgewater industries to a Receiver. Later in the same year, 1809, when in Montreal, in connection with his Chaudiere property, one of his creditors had him arrested and sent to jail for debt. Being unable to pay the claim, he remained in confinement for seven years. Randall ascribed this harsh treatment to envy and malice. While he was still in prison the war of 1812 broke out, and his establishment at Niagara was burned to the ground by the invading army. The Receiver made over the property in a somewhat informal way to Colonel Thomas Clarke, who later became Honourable Thomas Clarke. Colonel Clarke went to England and by some means had this very imperfect title changed into a patent from the Crown to himself.

CHAPTER II.

THE JUDGMENT

After nearly seven years of close confinement, the prison doors were at last opened and Randall once more became a free man. He immediately retained Honourable D'Arcy Boulton, who at this time was the Attorney General of the Province, to commence an action for damages against Clarke and those who were associated with him. The nature of his claim is somewhat obscure, but judgment was given in his favour for £10,000. Unfortunately, this judgment was set aside by the Court of Kings Bench on appeal, and a new trial was ordered. At this trial Honourable D'Arcy Boulton also acted for him. Judgment was given in his favour but the amount was left to arbitration. Each side appointed its arbitrator, but they were unable to agree on a Chairman with the result that the arbitration proceedings were dropped and Mr. Randall brought a third action. This action was proceeding to trial when Honourable Mr. D'Arcy Boulton, who was still acting for him, was appointed a Judge of the Kings Bench and his son Henry J. Boulton, who was his partner, took over the proceedings.

At this time Mr. Randall was in very low pecuniary circumstances, and was indebted to Honourable D'Arcy Boulton and Henry J. Boulton to the extent of £100, for fees in the previous actions. Henry John Boulton therefore demanded and obtained from Randall a mortgage for £200, covering the property in the township of Nepean on the Rideau River at the mouth of the Jock, to which reference has already been made. While this mortgage was meant as security for the payment of the indebtedness of £100, there was not contained in it any covenant for the payment of the £100, and Boulton therefore took, some months later, a bond for £100 from Randall, which bond recited the mortgage and the omission of any convenant for the due payment of the amount, and provided that Randall should pay the sum of £100 on the first day of January 1819.

Randall's case was then entered on the list of cases for trial at Niagara in October 1818. Unfortunately, Mr. Justice

D'Arcy Boulton was delegated to take the Niagara Circuit. His son, Henry John Boulton attended with Randall at the Court House, with a great number of witnesses prepared to go to trial. Just before the case was called, Henry J. Boulton suddenly demanded from Randall a note for £25, to cover his Counsel fees for attending at the trial. Randall accordingly gave him a promissory note for this amount, payable on the 1st of May 1819. Shortly afterwards his case was called, but Mr. Justice Boulton declined to try it on the ground that he had been Attorney previously for Randall and had instituted the action. Mr. Justice Boulton's refusal to preside at the trial was obviously a correct one, and it is inconceivable that Henry John Boulton could have believed that under the circumstances, his father would have presided. He and his father were on the best of terms, and they had probably many times discussed this case when they were partners together. The strong probability is that he knew from conversations before he left Toronto to go to Niagara Falls that his father would not preside at the trial, and his demand for the promissory note under these circumstances, and just before the case was called, when his client was absolutely at his mercy, would appear, to say the least, to be somewhat peculiar. The case was adjourned to the sittings to be held in the following summer.

Henry J. Boulton was cursed with a bad-tempered, overbearing, bullying disposition. Ten years afterwards he was Attorney General of the Province, leading the Family Compact forces in the House of Assembly, against the attacks of the Reform Party.

A writer has thus described him—

> "The Reform members found Attorney General Boulton an infliction specially hard to bear. He was simply unendurable. His capacity was barely such as to enable him to discharge his official functions and what he lacked in ability, he made up in bluster. He had an abominable temper, a haughty over-bearing manner. He was always committing blunders, which he refused to acknowledge, and he roared and bullied his way through one complication after another

in a fashion which disgusted even those with whom he acted."

He now quarrelled with Randall, who, judging by his correspondence, was apt to be quarrelsome himself.

On May 1, 1819, the promissory note for £25 became due. The bond had fallen due four months before. A few days later, Boulton sent his clerk to Randall with a cognovit for Randall's signature, (a cognovit being a consent to judgment) at the same time kindly explaining to poor Randall that he was doing so, "to be enabled, if so inclined, to take out an execution against you."

He coupled his request for this cognovit with a threat. Randall, however, refused to be frightened into signing the cognovit, and wrote Boulton to this effect. Boulton's letter in reply is interesting, if, for nothing else, than as showing how a Family Compact lawyer could address a penniless client in the early part of the nineteenth Century if his fees were not attended to promptly,—

> "I received your most extraordinary letter of the 17th instant by Mr. Smith, which, if there is any meaning at all to be given to it, is a very impertinent one, and such a one as I will not permit you or any other client to write to me with impunity. I would have you understand that I am not rendering you any professional assistance, from what you may fancy "popular reasons", and therefore any further than my duty to my client prompts me, I do not care a farthing about you. As I am not looking to the result of your business, as you call it, for my payment, I insist upon having the money long due to me for services already performed, paid or secured in a sufficient manner. You may be certain that I shall not retract one farthing."

On the 31st of May 1819, Boulton issued a writ of summons against his client Randall and in due course obtained a judgment for the amount of his claim.

The circumstances which led up to Randall's indebtedness to and quarrel with Boulton have been set forth in detail, as this judgment cost Randall the Chaudiere property. It was also the cause of legal and political controversies extending over a great many years, in which all the men prominent in public

life of the period figured, and in which practically all the evils which effected the body politic and judicial, and which William Lyon Mackenzie and the other Reformers of the day battled against, were shown in a glaring light. Especially was this the case with respect to the defects in the judicial system of the Province. In order to appreciate the controversy, it is necessary to understand the procedure under which Boulton obtained the judgment, and it is difficult to explain this without being somewhat technical.

The Province at that time was divided into various Judicial Districts,—York, now Toronto, was in the Home District, and the writ of summons was issued from the Court Office at York. Randall was living in the Niagara District. Under the rules of Court if a party served with a writ of summons did not enter an appearance within the stated time, the plaintiff was required to serve a demand on the defendant for a plea. This was a request to the defendant to enter in the office from which the writ was issued, a written statement of his defence, if any, to the claim. Under the Statute creating the Court of Kings Bench, the defendant was allowed eight days after being served with the demand of plea, in which to fyle his plea, but under a rule enacted by the Judges of the Court, it was provided that if the defendant did not reside in the District where the action was brought, the demand of plea should be posted up in the office, accompanied with an affidavit, stating that the defendant's place of abode within the District was not known to the deponent, and in such case, judgment could be signed four days after the demand of plea was so posted up. This rule carried injustice upon the face of it, and it is difficult to understand why the Judges made the rule, as it clearly lacked every element of equity or fairness. If the defendant lived within the Town of York, within the precincts of the Home District, the demand of plea could be served on him, or left at his usual place of abode and he was allowed eight days to fyle his plea of defence, but if he lived in the remoter settlements, in the very eastern or western extremities of the Province, the eight days given by the Statute were arbitrarily reduced to four, and the notice instead of being left at his abode was fyled in an office, to which, from his remoteness, he could not possibly have access, and of the

proceedings from the unavoidable difficulties of communication, he could not be apprized. Of this rule, Boulton took advantage. Boulton instructed his student James B. MacCauley, later Mr. Justice MacCauley, to make an affidavit that Randall's place of abode in the Home District was not known to him; on the 17th of July he posted up the demand in the Office, and four days later judgment was obtained by default.

The rule referred to, was of a most extraordinary nature,—

> "If the defendant's place of abode be not in such District, then the demand of plea shall be entered in the Office, accompanied with an affidavit, stating that the defendant's place of abode within such District is not known to the Deponent".

To take such an oath must have done violence to one's conscience, inasmuch as it clearly implies that the place of abode is in the District, but is not known to the party making the affidavit; but if his place of abode was in the District, the rule did not apply and the defendant should have been served personally with the demand. This rule was formulated by the Hon. Thomas Scott, Chief Justice, the Hon. William D. Powell, and the Hon. Mr. Justice Campbell, the latter two of whom became successively Chief Justices of the Province. They were all men of the very highest ability and standing, and it is fair to suppose that on account of some conditions existing at the time, it was advisable to have the affidavit made in this way, instead of a simple oath that the debtor had no place of abode within the District. The wording, however, of the rule, and the practice under it, were unfortunate.

As will be explained later, Boulton neglected to observe three very important rules of Court in obtaining his judgment, the observance of which would have given Randall an opportunity of knowing what was being done. Randall later claimed that he was waiting to be served with the demand of plea, and not having been so served, he was under the impression that Boulton was not proceeding with his claim. The judgment was therefore obtained without his knowing it. Boulton immediately issued a writ of fi fa directed to the Sheriff of the Home District against the goods and chattels of Randall, knowing at the time that Randall was not living in the Home District

and had no goods or chattles there, and a month later, the Sheriff made the expected return of "nulla bona" to this writ. On the 1st of November 1819, he issued a writ of fi fa directed to the Sheriff of the Johnstown District against Randall's lands. The Johnstown District at that time comprised the Counties of Leeds and Grenville, and stretched from the St. Lawrence River up to the Ottawa River. Randall's lands at the Chaudiere Falls lay in this District and became subject to the writ. It was evident that Boulton had not forgotten the application his father had made for lot No. 40 ten years before, and that he intended to make it available for payment of his judgment. Of this judgment and the writs of fi fa Randall knew nothing.

In the meantime, Randall's action had come on for trial at Niagara Falls. Boulton did not appear and Randall was obliged to proceed without a lawyer. Against him was Mr. John Beverley Robinson, later Chief Justice of the Province of Ontario, and undoubtedly the leading lawyer in Upper Canada at that time, and Mr. John Beardsley, the senior member of the Upper Canada bar. Randall on this occasion lost his action.

CAPTAIN BENJAMIN STREET, R.N.
Probably the most distinguished of the early military and naval settlers in the County of Carleton

CHAPTER III.

EARLY SETTLERS

After the war of 1812, the Government had the problem on its hands of disposing of the Regiments of British soldiers which had been sent to this Country to resist the invasion.

Land was set aside for the officers, non-commissioned officers and men of the 99th and 100th Regiments, near what is now Richmond, Smiths Falls and Perth. Those of the 100th Regiment who accepted the Government offer of land left Quebec in a body on the 28th of July 1818, and landed at the foot of the Chaudiere Falls on Randall's lot early in August of the same year. Tents were pitched and huts built for the women and children who remained in camp, while the men cut a road through to near Richmond and selected their land. As the women and children numbered several hundred, the flats at the Chaudiere must have presented a busy picture at that time.

The road built by the Richmond settlers under the superintendence of Sergeant Hill of the 99th was a Government work. It was hardly fit to be called a road, but was an improvement over the old Chaudiere Portage trail. It followed with some few minor exceptions the course of the present Richmond Road.

About the same time a settlement was made in the Township of March along the river front by military and naval officers. Captain Monk of the 97th Regiment was the first to secure land there about eight miles beyond Britannia. Captain Weatherley and Captain Landel of the army soon followed. Captain Street, of the Royal Navy, who was probably the most distinguished of these early settlers, and who had performed very praiseworthy services during the Napoleonic wars, and had been presented with the freedom of the City of Liverpool, settled about six miles above Britannia. General Lloyd (who had seen much service in India), and Captain Cox of the 98th came a little later. All these arrived between 1818 and 1820.

The first permanent settler in the township of Nepean was Mr. Ira Honeywell, the great grandfather of Mr. F. H. Honeywell and of Mr. A. E. Honeywell, the well known Ottawa Solici-

tors. This early pioneer made his way up from Prescott where his father resided, in the winter of 1809 and settled on land which the latter had acquired as a United Empire Loyalist. Mr. Honeywell travelled on the ice down the Rideau River. A jumper drawn by a yoke of oxen carried his effects. On arriving at the Falls, now known as Hogs Back, he left the river and cut his way through the forest to the banks of the Ottawa, some three miles above the Chaudiere. Mr. Honeywell settled on his farm at about the same time that Randall acquired the Chaudiere property.

In 1820, in addition to Mr. Ira Honeywell, there was living in the following order above "The Flats", Thompson, McConnell, Holt, Moore and LeBreton, their farms being scattered along the Richmond Portage.

The pioneer settler on the Rideau River near what is now Ottawa was Mr. Bradish Billings, whose descendants are so prominent and well known locally. He settled on his farm at Billings Bridge in November 1812, but had been engaged in lumbering operations on the Rideau for two or three years previous to that date. Abram Dow arrived with his family in 1814 on lands he had secured across the river from Mr. Billings. Two brothers settled near him shortly afterwards. It is interesting to note that what is now St. Louis Dam was previously known as "Dow's Swamp".

Down beside the little landing place on the Ottawa River, at this time called Richmond Landing, a man named Andrew Berry had erected a small tavern, which, no doubt, was highly appreciated by the men of the settlement and by convivial souls who crossed over from Philomen Wright's colony on the other side of the river, now Hull. The following letter from this hotelkeeper Berry to Mr. Randall is of interest,—

"Point Nepean, 8th Jan., 1820.

Honored Sir,—

Having wrote you on the 27th of October last and not receiving an answer, I again take the liberty of troubling you on the same head.

Having been here ever since July last and had every opportunity of seeing the necessity of a house of accommo-

dation I took the liberty of erecting one (as a tavern) near the old house built by Mr. Torry.

It being the opinion of everyone here that nothing can be done on the point in regard to cultivation, I mean with your full approbation to make a trial by laying out a garden, having been a gardener seven years in this Country, during my service here in the Royal Artillery, being employed chiefly by Generals Brock and Glasgow.

From what I have heard from several persons who have the honour of being acquainted with your character, I have every reason to hope for a favourable answer, or should not have gone thus far without hearing from you. I hope therefore, Sir, you will not think it too much trouble to send me an answer the first opportunity.

As to my character, I can no doubt fully satisfy you on that point; in compliance with the above you will much oblige,

Your obedient servant,
ANDREW BERRY."

It should be remembered that what later became known as LeBreton Flats was then called Nepean Point. What we now know as Nepean Point was not so called until after Colonel By commenced the construction of the Rideau Canal.

The settlers at Richmond, on the river bank above Britannia, and along the Richmond Road were dependent on Montreal for their supplies. These were conveyed up the river in boats and canoes and landed in the little bay at the foot of the Chaudiere Falls, where a small wharf had been constructed. This little landing place was called Richmond Landing, and was a place of much importance in the eyes of these early pioneers. Everyone going or coming from Montreal passed through the Landing. It was there they drove from Richmond and March for their mail or to meet their friends. It was the centre or gathering point for the little scattered community.

CHAPTER IV.

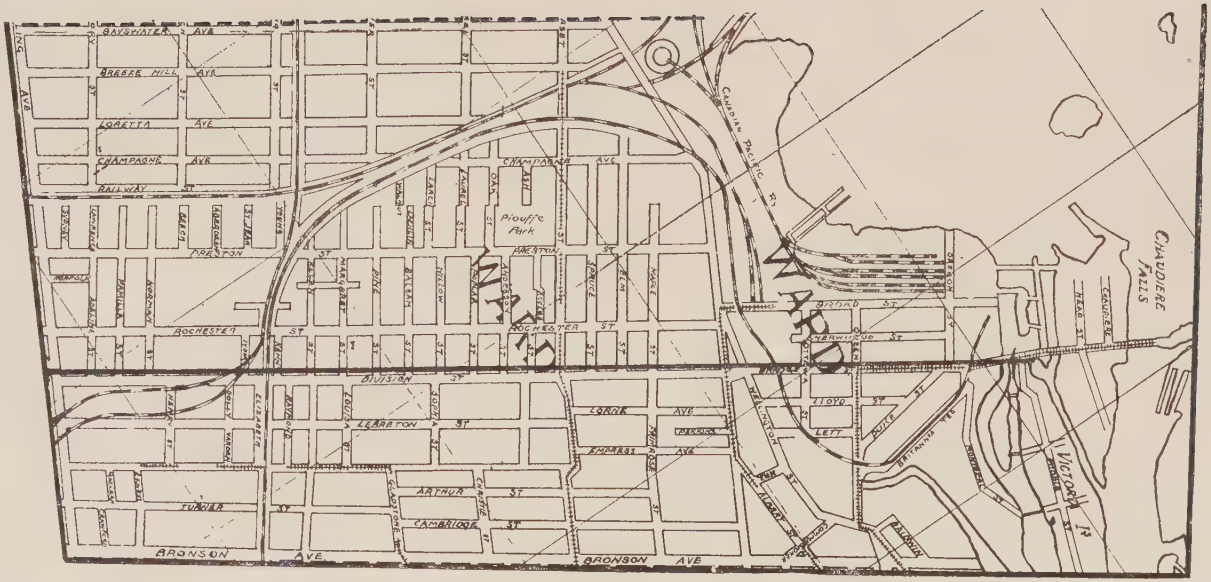
THE SALE

Under the rules of Court as they then existed, a Sheriff was unable to sell lands seized by him under a judgment until the expiration of one year from the time he received the writ of execution. The sale therefore of Randall's property under the judgment was not held until December 10th, 1820. The sale took place at Brockville and there were between twenty and thirty persons in the Sheriff's Office. It was hardly to be expected that anyone living along the front, as the St. Lawrence District was then called, would be interested in this back woods water power. Doubtlessly most of those present were attarcted by curiosity rather than by any intention of investing money. Considerable controversy has since taken place as to whether proper notice was given of the sale, or not. It is clear, however, that the sale had been advertised in a newspaper at Brockville and notices had been sent to stores and other places where people might see them. The sale was probably as well advertised as such sales usually were at the time. It does not appear, that any of the military settlers in the Township of March took an interest in the sale. The lot was apparently unsuited for agricultural purposes, and in addition these military settlers had been given lands for nothing and were probably too busily engaged in clearing them to think of purchasing a property which could only be utilized for power purposes, after the expenditure of considerable money in development work. The settlers at Richmond were very much interested in Richmond Landing and were desirous that the Government should obtain land there and erect a storehouse for them, as there was no place to store the goods and supplies that came up the Ottawa River consigned to them. As will be seen later, it is a fair deduction that no one at Richmond heard of the proposed sale. From the records available, it would appear that Captain LeBreton was the only settler in the neighborhood who took an interest in it. He had been anxious to buy a portion from Randall more than two years before. as the following letter from him shews:—

Lot 38

Lot 39

Lot 40



Plan of a portion of the present City of Ottawa owned or under lease by Robert Randall in 1810

"Nepean, 8th May, 1819.

Sir,—

I had the honour of addressing you last Autumn, but not knowing your address correctly, I am doubtful of your having received it. The purport of that letter as well as the present was to know if you would dispose of a part of your lot of land on the Falls of the Chaudiere, as I should be glad to have one or two acres either by sale or lease. I have not the honour of being known to you personally, but having served in the late war in various parts of Canada and particularly the part of the Country where you at present reside, and although my military occupation prevented my having much communication with the gentlemen of your neighbourhood, I believe you will obtain information of me from Mr. Samuel Street, although but little acquainted with that gentleman. I was at that time Deputy Assistant Quarter-Master General and at present have retired at Captain's half pay, of the Sixteenth Regiment, and having drawn some lands in this Country have taken up my residence at the Rapids des Chenes five miles from your lot, and as the whole of that distance is land carriage, I find a great inconvenience for want of place to store my goods at the landing and am now obliged to build a small store of round logs on your property, which, if not agreeable to you, I will immediately remove, but if you will either sell or lease one or two acres at the lower point, next to the island in the Bay, I shall be glad to know your terms by the earliest upportunity.

There is a person here by the name of Burrows, who pretends to be agent for that property, alias Honey, but as I could not believe that he was entrusted with any property I have not applied to him. If you have no agent here, and that I can be in any way serviceable in that line, though not with the view of pecuniary motive, but merely for the advancement and settling of the country, I beg you will command me; I shall at all times feel happy to communicate with you on the subject. Should your business at any time lead you to York please mention my name to Judge

Campbell with whom I have had the honour of being acquainted some years past.

I have the honour to be, Sir,

Your most obedient and humble servant,

JOHN LEBRETON".

Captain LeBreton arrived in Brockville the day before the sale, having made his way by canoe from the mouth of the Rideau River to Kingston, and then by horse-back from Kingston to Brockville. The evening before the sale, he called on Mr. Livius P. Sherwood ,a well known and highly respected lawyer in Brockville. Mr. Sherwood was of United Empire Loyalist stock, his father, Mr. Justus Sherwood, having been a Captain in active service during the Revolutionary War. He had been one of the first members of the Upper Canada House of Assembly which met at Newark, now Niagara, in 1792. Mr. Justus Sherwood had two sons, Samuel and Livius Peter Sherwood. Both sons were educated for the bar. Mr. Livius P. Sherwood was called in 1803, and is number nineteen on the Barristers' Roll at Osgoode Hall. He was at this time a member of the Upper Canada House of Assembly representing the County of Leeds, and in 1822 was elected Speaker of the House. In 1825 he was appointed a Judge of the Kings Bench. He proved himself a painstaking Judge and gave general satisfaction, on several occasions being required to give judgment in matters of the very greatest importance.

Captain LeBreton explained to Mr. Sherwood that a valuable lot was to be sold at the Sheriff's sale the next day, and that he, LeBreton, desired to become the purchaser, but he was not sure that he had sufficient money, as he understood that other persons had come into Brockville intending to endeavour to buy. He proposed to Mr. Sherwood, who had never seen the property, that he should either lend him money to enable him to buy the lot, or should join him in the purchase. Mr. Sherwood explained that he was not inclined at that time to buy land but that he would assist LeBreton in purchasing it. It was eventually agreed between them that he would take part of the lot from LeBreton if he bought it, or would advance the money if LeBreton would

give him satisfactory security. William Morris a prominent merchant in Perth was the only other serious bidder for the property. Mr. Morris had seen a notice of the sale, in fact, one had been placed in his store at Perth, and he had walked from Perth to the property to see it, and had instructed his brother who resided in Brockville, to bid it in for him. Captain LeBreton and Mr. Morris bid against each other up to £499 when Morris retired from the contest, and the property was declared sold to Captain LeBreton. The day following the sale Captain LeBreton gave Mr. Sherwood a conveyance of an undivided one-half interest in the lot, and some months later a partition was made Captain LeBreton taking the west half and Mr. Sherwood the east half. From these ownerships came the names,—"LeBreton Flats" and "Mount Sherwood".

CHAPTER V.

CAPTAIN JOHN LE BRETON

Of Captain John LeBreton who was so active in the early days of Bytown and after whom an important portion of the present City of Ottawa was named, little has hitherto been known. He came of a Jersey Island family and while a young man joined the army. In 1811 he was stationed as a Lieutenant in the Quarter-Master Generals Department at Quebec. In this office he seems to have been active and zealous in the performance of his duties. On the outbreak of the war in 1812, between Great Britain and the United States, he was attached to the Royal Newfoundland Regiment of Fencible Infantry, a regiment which earned an enviable record during the war. He accompanied the regiment on General Brock's expedition to Detroit in 1812, and was present at the capture of the city. In the following Spring he took an active part in a battle with the Americans on the Miami, being mentioned in General Proctor's dispatch in these terms:—

> "Lieut. LeBreton of the R.N.F.L. Regiment, Assistant Engineer by his unwearied exertions rendered essential service".

And later in the same dispatch General Proctor wrote:—

> "I have to notice Captain Chambers' gallant conduct in the attack near the batteries at the point of the bayonet, a service in which he was well supported by Lt. LeBreton of the R.N.F. Land Regiment".

After the disastrous battle at Moraviantown where the British were badly defeated and were obliged to retreat to the Niagara River, giving up the whole western portion of the Province, LeBreton volunteered and was sent with a flag of truce to General Harrison to arrange for an exchange of prisoners. On his way to Harrison's Headquarters he was appealed to by numbers of Canadians who had remained on their farms after the British Army had retired, to assist them to join the British Army, which, to quote his report,—

"I would have done had it not been for two tribes of

hostile savages by whom I was surrounded and who frequently threatened my life, notwithstanding which I would have effected their emancipation, as well as several soldiers of the 41st Regiment taken prisoners on the 5th of Oct., 1813, had I been allowed to return by the same route, and which was, I believe, General Harrison's principal reason for having detained me, and although I regret much having missed the opportunity of bringing those men, yet I am in a great measure compensated by the valuable information I obtained of the situation of the navy on that lake."

LeBreton on this trip also learned of the location and strength of the American Forts at Detroit and of a very large depot of supplies of every description for the Western American Army, which were unknown to the British Authorities, and which he was of opinion could be easily captured. With boyish enthusiasm he writes,—

"Should His Excellency be pleased to authorize me to raise a Company, I am very certain of being able to accomplish it in the course of three months from amongst those men before alluded to, as they are all British subjects and a great proportion of them Scotchmen. I would require for this purpose, the assistance of about five or six of the Western Indians and two non-commissioned officers, Scotchmen if possible".

In a report by Lieut.-Col. Tucker of a minor engagement in 1813, referring to LeBreton and another, he says,—

"These officers afforded me the greatest satisfaction,—their conduct was conspicuous to all".

Shortly afterwards he was appointed on the Quarter-Master General's Staff. In the Battle of Lundys Lane in July 1814, he was severely wounded. Lt.-General Drummond in his report on this battle writes,—

"Major Maule and Lieut. LeBreton of the Quarter-Master General's Department were extremely useful to me,—the latter was severely wounded".

This wound prevented LeBreton from engaging in any further operations and in 1815 he applied for leave to return to England which was granted. Before sailing he received the follow-

ing letter from Major-General Proctor, which coming from an officer of such high rank to a Lieutenant must have been most highly appreciated,—

"Montreal, August 16, 1815.

Sir,—

I have the honour to acknowledge the receipt of your letter of the 8th instant, informing me of your having obtained leave of absence to proceed to England and also conveying a request that I would be pleased to grant you such a testimonial of your services as I might think you were entitled to, during the period you were with the Division of the Army under my Command in Upper Canada. It is with much satisfaction I can state that on every occasion you were desirous of meeting the service, uniformly evincing the most indefatigable zeal in the performance of your duties in the Engineer Department and occasionally in that of the Quarter-Master General's.

I have already publicly acknowledged your exertions during the arduous service on the Miami and on the 5th May, 1813, especially on the same occasion, I gratefully recollect your having volunteered and performed to my satisfaction a disagreeable and important duty, soon after the unsuccessful affair Sandusky going to that place with a Flag of Truce at the risk of imprisonment in Retaliation for our treatment of a Spy, and an apprehension of which caused the Reluctance shewn by the Officer whose duty it should have been but for your zeal.

Wishing your promotion,

I have the honour to be, Sir,

Your faithful Humble Servant,

HENRY PROCTOR,

Major General.

To,—

Lieut. LeBreton,

Royal Newfoundland Regt."

LeBreton later returned to Canada, having in the meantime been promoted to a Captaincy, and taking advantage of the pro-

visions whereby the soldiers who had served in the war were entitled to land grants, he obtained a grant in 1819 of two hundred acres at what is now Britannia.

Captain LeBreton's reputation has been somewhat tarnished in Ottawa by reason of the legend that he obtained the "Flats" by a dishonourable act. The story is that he was on the staff of Lord Dalhousie the Governor-General of Canada, at the time Colonel By came to Quebec, and that he was present at an interview between these gentlemen at which it was decided that the canal should run from the present St. Louis Dam through Rochesterville and the Flats and enter the Ottawa at Richmond Landing, or where the waterworks aqueduct now flows into the Ottawa. The story is that, thus learning By's intention, LeBreton surreptitiously bought the Flats property, but that, when Colonel By learnt what was done, he, in a rage, altered the plans and adopted the present route of the canal. As LeBreton was never on Dalhousie's staff, and bought the property, six years before Colonel By came to Canada, at the auction sale, as explained in the previous chapter, it is clear that there is no truth whatever in the story.

There was, however, an unpleasant misunderstanding between Lord Dalhousie and LeBreton over his purchase of lot No. 40 at the sale, and the freedom with which Dalhousie vented his indignation probably accounts for the distorted story.

Fortunately both LeBreton and Dalhousie have set forth their views fully in writing. The writer does not propose to attempt to judge, who was right in this controversy, but will allow the letters which follow to speak for themselves,—

To,—

His Excellency The Right Honourable George Earl of Dalhousie, Baron Dalhousie Castle, Knight Grand Cross of the Most Honorable Military Order of the Bath, Captain General and Governor in Chief in and over the Province of Lower Canada, Upper Canada, &c., &c., &c.

My Lord,—

I humbly beg leave to address Your Lordship on a subject which has been some years in agitation and emanating from Your Lordship, highly prejudicial to my character, and must with submission to Your Lordship, state that your

Lordship has been misinformed on the subject. I allude, My Lord, to some land purchased by me in the year 1820, and which Your Lordship has been pleased to say, "was purchased by me with a view to imposing on Government".

And as Your Lordship appears from recent circumstances to be still of the same opinion, I deem it expedient to recapitulate the whole affair in hopes that Your Lordship will be pleased to reconsider the subject and to render me that justice which the case requires.

Sometime in the year 1820, I learnt that some lots of land in the Township of Nepean where I reside were to be sold at Sheriff's sale, among which, was one which I considered very valuable. I attended the sale which was in the Court House at Brockville, and sold by the Sheriff of the District. I purchased the lot in question and part of which I then sold to Livius P. Sherwood, Esquire. On my return to my habitation in Nepean I immediately wrote to George T. Burke, Esquire, Superintendent of Settlers, acquainting him with the circumstances, stating that if a store house was required for Government either the one already built or another should be at their service, at the same time requesting to be put in possession of the key of the one already built by the Government, it being on my land and unoccupied by them. In reply to which I received a letter from the Quarter-Master General's Office intimating that the land in question was required for Government purposes, and concluding that I could have no hesitation in giving it up. ,

Having some business at that time at Quebec, I thought it most prudent to see Your Lordship in person. On my arrival at Quebec I waited on Lieut. Col. Cockburn, then Deputy Quarter-Master General, for the purpose of being introduced to Your Lordship. He asked if I could not take wild lands in lieu of the said land in question, to which I replied that wild lands were of no use to me whatever, besides which I had sold part of the land to Mr. Sherwood and could not act without his concurrence. He then wished to know what I would ask for the land, to which I replied, that, as to my part of it, I should leave it entirely to Your

Lordship, and that I was confident Mr. Sherwood would do the same. We then walked on toward the Castle, during which time Col. Cockburn repeatedly urged me to name a price which I declined, and replied as before, that I would leave it entirely to Your Lordship. On arriving at the Castle gate Col. Cockburn said he would not see Your Lordship on the subject unless I would name a price. I then told him that I *valued* it at three thousand pounds, (a sum less than half its value). I waited below in the waiting room whilst Col. Cockburn had a conference with Your Lordship. I was then called up to the Drawing Room, but what was my surprise when I was met at the door by Your Lordship and told, that I was an Impostor ! that I had purchased the land in question in an underhand manner with the view of imposing on Government !!! Such a reception from a personage of Your Lordship's exalted rank and character, renowned for justice and urbanity, convinced me that a misrepresentation had been made to Your Lordship. And when I endeavoured to explain and defend myself, Your Lordship would not allow me to speak: adding that "Doctor Thom of Perth had written down to say that it was his intention to have purchased it for Government; but that I had bought it in an underhand manner and unknown to him." Your Lordship was at same time pleased to say that you would take measurs to deprive me of it, and although not in express terms I understood, it was Your Lordship's intention to report my conduct as it was represented to Your Lordship to the Commander in Chief with a view to depriving me of my Half Pay. Your Lordship was also pleased to implicate Mr. Sherwood in what Your Lordship termed a nefarious transaction. It is but justice to that gentleman to say that Your Lordship must be totally unacquainted with him; His honour and integrity are too well established to be injured by any aspersions of the foregoing nature, which could only have been intimated to Your Lordship through malice. And I now pledge my word of honour, that I never had any communication with him on the subject of the land either directly or indirectly, nor did he know the value of the land until the morning of the day of sale. Knowing that

Dr. Thom and Mr. Morris were about to purchase it; not for Government, but for their own private speculation (as Mr. Morris has since publicly declared) and fearing that it would rise beyond me I pointed out to him its great value and advantages and asked him to join me in the purchase, which he at first declined but ultimately acceded to.

With respect to Dr. Thom's letter I beg leave to say that the land was publicly advertised, was sold in the Public Court House at noon day. Doctor Thom and William Morris, Esquire, of Perth employed Messrs. Alexander and James Morris of Brockville to bid for them. They did bid as far as they thought proper, when they declared publicly they would bid no further, the land was then knocked down to me. Doctor Hubble at Brockville also bid for the land. May I beg to ask Your Lordship what part of this transaction was underhanded or imposing. If Doctor Thom did write such a letter which I cannot doubt from Your Lordship's assertion, he will of course prove the charge; I stand ready, My Lord, to answer to the accusation, and I beg Your Lordship will be pleased to cause the enquiry to be publicly made.

After the interview with Your Lordship before mentioned, being convicted and condemned on the *Ipse dixit* of my enemies without the privilege of trial or defence, and unwilling to remain under the unfavourable impression entertained by Your Lordship, I waited on the Honourable Mr. Hale, the Hon. Chief Justice Sewell, Lieut. Col. (at present) Sir John Harvey, I represented the case to them, they unanimously agreed that Your Lordship's conduct in this instance was different from its usual tenor and that the circumstances had been misrepresented to Your Lordship. They recommended me to address Your Lordship on the subject, and to refer Your Lordship to them for their knowledge of me, which I did accordingly, but without any satisfactory result.

As a further proof of the injustice of the accusation, as soon as I heard that the land was to be sold, knowing its great value and fearing that my means would not allow me to purchase it, I called on Charles Shirreff, Esquire,

Hamnett Pinhey, Esquire, and Captain Street, Royal Navy. I mentioned it to them and asked them individually to join me in the purchase, which they for pecuniary reasons declined. I beg to ask Your Lordship if this was acting clandestinely; and if I wished to impose upon Government (if purchasing land can be so called) the very lot of land adjoining, which Your Lordship was pleased to purchase for Government for £750 had been previously offered to me for £15.

And even, My Lord, had I known that it was required for Government service, not being authorized to purchase it for them, had I not a right to purchase it for myself if my means would allow me? Had Your Lordship ever intimated to me that the land was required for Government I would either have purchased it for the Government or not purchased it at all. Is it because I have served His Majesty, and I trust with honour, that I am not allowed to better my situation in life? What situation of honour or profit has Your Lordship ever bestowed on me? None, my Lord, whilst numbers of Officers in this Province hold offices of honour and profit who cannot produce such testimonials of their services as I have the honour herewith to lay before Your Lordship, besides the General Orders and Despatches of this Country during the late war, to which I beg leave to refer Your Lordship. And will not Your Lordship's generosity allow me any credit for the establishment which I have made in this country at the expense of seven thousand pounds? It is not an establishment, My Lord, where the American Independence is celebrated by the Firing of His Britannic Majesty's Cannon, I beg to refer Your Lordship to Major Elliott and Captain Grant of the steamboat for the explanation. But an establishment noted for Loyalty, Industry and Sobriety, and I trust worthy of the name with which it is honored.

I have the honour to lay before Your Lordship herewith copies of two letters, one from His late Royal Highness the Duke of Kent, alluding to services performed when an Ensign not 18 years of age, the other from the late Major General Proctor at the close of the late war. I merely by those

letters wish to prove to Your Lordship that as a soldier I did my duty; and as a civilian under a British Constitution I expect justice and right to enjoy my property unmolested; the latter privilege I have been debarred from,—I allude to the case of Andrew Berrie and Isaac Firth, who are Trespassers on my property and have kept possession against my will. On my giving them notice to quit the premises they applied to Your Lordship. You were pleased to direct them to keep possession and I am informed, I believe from undoubted authority that Your Lordship has even employed a lawyer at your own expense to defend their cause ! ! ! From Your Lordship's authority and station it is but fair to conclude that any ill opinion of me favoured by Your Lordship may be attended with aggravation and injury to my interest in other quarters, and to which I attribute the conduct of the Lieut.-Governor of the Upper Province toward me.

I shall refrain from further remarks, My Lord, and beg Your Lordship will be pleased to reconsider the subject and to grant me that justice which the case requires. In fact the prejudicial reports which have spread through the country, the privation of the friendship of several gentlemen of the utmost respectability, the duty I owe to the three Honourable Gentlemen before mentioned and to the rest of my friends, require me to take every legal step towards a public justification of my conduct, and to which I humbly hope and trust Your Lordship will be graciously pleased to accede.

I have the Honour to be,

With all due submission,

Your Lordship's most obedient,

Humble servant,

JOHN LEBRETON.

Britannia, Ottawa River
30th March, 1827.

"Military Secretary's Office,
Quebec, 9th May, 1827

Sir,—

I am directed to acquaint you that the Commander of the Forces has received your letter, to which His Lordship would not have thought it worth while to return any answer, but for the purpose of having a true statement of the subject committed to record. With this view I have received His Lordship's commands to transcribe and convey to you the following statement, drawn up by Himself on a perfect and clear recollection of the whole of the transaction to which it relates.

"In 1820 I made it my first duty on my arrival in the Province to visit it as extensively as the period of the season permitted. I passed up the Ottawa and crossed the Country from Hull through the Military Settlement then just begun. At Richmond Major Burke with a party of the Half Pay Officers there (as many as the house could hold) dined with me; the chief subject of conversation was the means of promoting the public prosperity in that newly settled tract. It was evident to all, that a Government Depot for stores and supplies was highly important at the Richmond Landing, so called on the Ottawa, to establish an accessible point of communication and a certainty of supplies for the large population likely to assemble in that new Country.

The land belonged to a Mr. Randall, an absentee, and who could not then be found. No improvement had been made on it, and it was probable that the purchase might be made for a trifling sum; I gave an instruction to Major Burke, as Superintendent and in the presence and hearing of all at table, to take steps to effect the purchase, or to watch any advertisement of the sale of it, but to report to me before he concluded.

Captain LeBreton was then present, heard my sentiments, heard my instructions and in my idea, as a member of that settlement, as an officer and a gentleman was, in honour bound, to give his assistance. He did not do so, he availed himself of the information and set about a specula-

tive purchase to make a profitable bargain and then offer it to Government.

I heard nothing more on the subject until when Lieut. Col. Cockburn informed me that the Richmond Landing had been sold, and that Capt. LeBreton was in Quebec to offer it to Government. It was stated to me that he had bought it for £400, and offered it at £3,000, but in all probability might yield it at £2,000. I desired to see Captain LeBreton personally, and he came with Colonel Cockburn up to my writing room. I asked him if he seriously proposed such a demand. He said he did, and justified himself, I forget in what terms. I, at once, and very angrily, told him, I would not permit so scandalous an imposition on H. M. Government, and I gave him all my reasons for so thinking:

1st, A breach of confidence in availing himself of the information which passed at my table.

2ndly. It was not becoming in a British officer to catch at such a speculation.

3rdly. The difference from £400 to £3000, or even £2000 before he himself had paid his price, was indecent and shameful imposition.

From that one interview I formed an unfavorable opinion of Captain LeBreton and I have seen no cause to alter it since. I know nothing of his character. I thought then and think still that due notice of the Sheriff's sale was not given, and although the Solicitor General did report to Sir P. Maitland that it was done in due form, the later Memorials of Mr. Randall himself incline me to think the sale was not legal, and therefore Mr. LeBreton's title altogether bad, and the purchase of the lot an illegal transaction. I do not believe one word of Mr. LeBreton's assertion that he could have obtained from Mr. Fraser at £15 the lot for which that gentleman obtained £750 from Government.

With regard to the family of Firth, I did say I would support that family if ill treated by those illegal proprietors, and I will do so still at my own private cost.

I know nothing of Dr. Thom, Mr. Sherwood or any of those people named.

No further answer will be made on this subject if continued."

(Signed) DALHOUSIE,

I have, &c.

H. C. DARLING,

7th May 1827.

Captain LeBreton was a brave and gallant officer who fought and suffered for his country and, for that, his memory should be respected in the City of Ottawa of which he was one of the most prominent residents in the days of its youth.

CHAPTER VI.

IN THE COURTS

In 1820 Randall was elected to the House of Assembly by the freeholders of the District of Niagara and during the winter of 1821 while sitting in the Assembly, he was informed to his utter astonishment by William Morris, who had been elected the member for the Johnstown District that his property at the Chaudiere had been sold under the judgment at the suit of Henry J. Boulton.

Randall was still in financial difficulties, but he was able to persuade an old friend of his, Alex. Stewart, practicing at Niagara to launch a motion to set aside the judgment which Boulton had obtained. Mr. Stewart discovered several irregularities in the obtaining of the judgment. It had been secured in several respects contrary to the practice required by the Court which practice, had it been followed or enforced, would have afforded some protection to Randall. In the discussion of these irregularities, it must be confessed that the non-observance of the requirements, while technically prejudicial to Randall's interests, in that he was kept in the dark as to what was being done, may not have really prejudiced him as, owing to his financial position, it is very questionable whether he could have saved the property. By 1820 there were several judgments against him, and all his other lands had been sold by different Sheriffs. The non-observance of legal requirements, however, is always serious and apt to lead to injustice, and does not excuse Boulton for his neglect.

The following rules had not been observed:—

> "It is ordered that in future in cases of judgment by default on bonds conditioned for the payment of money a rule nisi to refer the bond to the Master for taxation should not be necessary, but in lieu thereof, a notice of motion for the pre-emptory rule shall be given in writing to the defendant or his attorney, but the rule shall be made absolute in the first instance on an affidavit being made of the service of such notice".

This rule required that Boulton should have served Randall with a notice that on a certain day he would apply to a Judge for an order referring the claim to the Master of the Court to settle the amount of the judgment.

Another rule read as follows:—

> "It is ordered that in future the note or bond is to be produced for the inspection of the Judges when a motion is made before referring them to the Master".

The observance of these rules would have given Randall notice of what was being done and there is always the possibility that he might have been able to protect himself or arrange a satisfactory settlement. While no doubt he was liable on the bond for £100, his liability on the note for £25, given under the circumstances related above, was very arguable. It should be remembered also that Boulton had a mortgage as collateral security for the £100 indebtedness and Randall might have arranged a sale of this mortgage or been able to realize some money on it with which to pay Boulton.

Another rule required:— . .

> "That from and after the end of this term the Clerk give no further writ of execution on a judgment by default on any bond without an order of Court in term time or the fiat of a Judge in vacation".

This rule had not been observed by Mr. Boulton so that clearly the writ of execution had been improperly issued. Mr. Stewart on his motion dwelt on the non-observance of these requirements, and argued that the judgment had been therefore improperly obtained, and should be set aside, and further that, even if the judgment was held to be valid, that the writ of execution had been improperly issued, and therefore should be rescinded, and everything done pursuant to it declared a nullity.

He also made objection to the Court having any power to make a rule such as the one which Boulton acted on, as has been explained in a previous chapter, on the ground that he was contravening the Statute; that where the Statute gave the Court power to make rules, it was only to regulate the practice where the Statutes had omitted to do so, but in this case there was no such omission, as the Statute required the defendant to be served eight days before the judgment could be signed. The rule limit-

ing the time to four days therefore contravened the Statute and was ultra vires of the Court.

Hon. John Beverley Robinson who was Attorney General at the time appeared on behalf of Mr. Boulton, who was now Solicitor General for the Province. The Court did not consider the matter on its merits, but simply held that Randall was too late in making his application and that therefore it could not interfere. While the Court was presumably right in its decision under its own rules, the injustice done to Randall is more marked when it is considered that from the neglect of its rules by Mr. Boulton, he was deprived of these notices to which he was entitled, by the written law of the land, and the rules of Court, and that it was due to the omission to give these very notices that he was so late in applying to set aside the judgment. Irregularities may be waived, after notice, by delay, but it would be productive of incalculable injustice if a notice could be superseded and a suit be clandestinely carried through, and the ruined defendant should be precluded from relief on the ground of delay, while the plaintiff sheltered himself behind his own wrong.

Two years later, in 1824, John Rolph, on Randall's behalf, applied again for a rule to show cause why the proceedings and judgment should not be set aside for irregularities, and why the writ of fieri facias issued upon the judgment should not be set aside, and restitution made to Randall. John Rolph, who acted for Randall, was one of the leading members of the Reform Party. An historian has thus described him:—

> "John Rolph was unquestionably one of the most extraordinary personalities who have figured in the annals of Upper Canada. He possessed talents which under favouring circumstances would have made him a marked man in either professional or public life in any country. Chief among his qualifications may be mentioned a comprehensive subtle intellect, high scholastic and professional attainments, a style of eloquence which was at once ornate and logical, a noble and handsome countenance, a voice of silvery sweetness and great power of modulation, and an address at once impressive, dignified and gratiating. His keenness of perception and his faculty for detecting the weak point in an

argument were almost abnormal, while his power of eloquent and subtle exposition had no rival among the public men of those times".

So bitter were Rolph's attacks on the judiciary that the emnity between him and the Judges subsequently became so great that he was obliged to retire from the practice of law. Afterwards he became involved in the rebellion of 1837 and was obliged to leave the Country for some years. Later after the union of Upper Canada and Lower Canada in 1841 he became a Minister of the Crown.

Hon. John Beverley Robinson, the Attorney General, again acted for Boulton. Robinson on this occasion relied upon the universal practice of the Courts of Law, which does not permit a case once determined upon motion and argument, to be again brought forward either upon the ground of the same, or of other irregularities not before insisted upon. He cited a rule passed in "the reign of one of the Jameses" to the effect that if any one dared to bring a motion or apply for a judgment on a case once decided, then an attachment should go against him and that the Counsel who so moves should not be heard in Court in that term. Mr. Justice Campbell stated in his judgment that at first he thought it strange and was very indignant that the irregularities pointed out by the defendant's Counsel should have taken place, and that Boulton should have obtained a judgment in such a manner. However, as it appeared that the irregularities had been discussed and decided upon by a Court many terms back, there was no authority for him to re-open and reconsider the matter. He also noted that there was a penalty attached to the breach of the rule against such second discussions, but as this was the first time it had ever been infringed in this Province, he would not desire to see the penalty enforced. On any future attempt of the kind he would enforce it. No doubt the Judge was correct, but again we see the Court obliged to adhere to one rule in order to uphold a judgment which had been obtained by a violation of three other rules of Court equally solemn and binding. As on the previous occasion, Randall failed by reason of a technicality apart from the merits of his motion.

Later on in the year 1824, as a last resort to get rid of the judgment, Randall was advised to apply for a writ of error

Coram Nobis, that being in the opinion of his Counsel his only chance, but the difficulty lay in procuring the writ as it was an original one issued out of Chancery and there was no such Court in the Province. However, this difficulty was at last surmounted, the writ was obtained under the Great Seal of the Province, and the matter was argued in the vacation of Trinity Term in 1825, before two of the Judges, Mr. Justice Boulton being absent in England. Judgment was reserved to be given in the following term. The Judges divided in their opinions and without giving judgment, announced that the matter must stand over until the Bench was full. This was to Randall tantamount to a decision against him, inasmuch as Mr. Justice Boulton was the missing Judge, and he could not sit, or be expected to give an opinion either way as the greater part of the money recovered under the judgment had been received by Judge Boulton himself.

In the summer of 1825 a general election was held for the House of Assembly. Randall was the candidate of the Reform Party in the County of Lincoln. Under an Act passed in the previous session, candidates were required to have certain freehold property qualifications. Randall at his nomination made an affidavit that he had a freehold estate in the Bridgewater Works on the Niagara River; 1200 acres of land in the Township of Wainfleet in the District of Niagara; lots 38, 39 and 40 in the First Concession of the Township of Nepean and the broken fronts of these lots; 450 acres of land on the Jock and Rideau Rivers in the Township of Nepean and some other properties. As a matter of fact he at that time owned none of the properties they all having been sold at Sheriff's sales under judgments obtained against him by different parties, with the exception of the Bridgewater Works, which property he had lost completely by reason of the grant to Colonel Clarke to which reference has already been made. His unfortunate experiences were well known to the people of his district; much sympathy was felt for him by reason of his sudden change from riches to poverty, and he was returned by a large majority. Immediately after the election, however, his political opponents laid a charge against him of perjury, for making the affidavit that he had a freehold interest in these lands.

The trial was the subject of great interest all over the Province. The struggle between the Tory Party and the Reformers had become most bitter by this time. William Lyon Mackenzie who was a warm friend of Randall had been elected to the Assembly at the election and had been making the most violent attacks against the Family Compact in his journal. He had been especially criticising and attacking Boulton who was now Solicitor-General, in the most extravagant way for the manner in which he had obtained the judgment against Randall. Randall's case was therefore well known and attracted great interest.

The trial was held in the Court House at Niagara Falls on September 7th 1825. For the Crown there appeared the Solicitor General Henry J. Boulton and Mr. J. B. McCauley. McCauley, it will be remembered, had been Boulton's student when the judgment was obtained against Randall, and it was he who made the affidavit that he did not know Randall's abode in the Home District. He had been called to the bar in 1822 and rose rapidly in his profession, constantly gaining the respect and confidence of all with whom he came in contact in a professional way. He had only been in practice seven years when he was elevated to the Bench as one of the Justices of the Court of Kings Bench and on the consolidation of the Court of Commons Pleas in 1849 he was made its Chief Justice. At this time he was an active member of the Tory Party.

Randall's bête noir, Henry J. Boulton as Solicitor-General, should have prosecuted him, but instead held a watching brief. This was explained by McCauley in his opening address to the Jury as follows:—

> "Motives of delicacy owing to some private misunderstanding between the Solicitor-General and the defendant have induced that learned gentleman to decline prosecuting the present indictment and he has requested me to conduct the trial for him".

Randall was defended by his old friend, John Rolph, assisted by Dr. Baldwin, and Robert Baldwin, both prominent members of the Reform Party, the latter of whom after the rebellion became Premier of Canada and is generally recognized as being

the father of popular or representative Government in this Country. The charge against Randall was limited to his having deposed that he owned the Bridgewater works, and the 1200 acres of land on the south side of the River Welland in the Township of Wainfleet. Probably the Solicitor General did not desire to have the facts in connection with the sale of lot No. 40 brought forth at the trial which may explain why Randall was not charged with having perjured himself in connection with this lot. The Crown failed to show in connection with the 1200 acres of land in Wainfleet, that Randall knew of the Sheriff's sale, and in connection with the Bridgewater property one of its witnesses had to admit that Randall had a claim on an undivided one-third of the land under a lease from General Simcoe for 999 years, which fact Rolph very cleverly used in his argument. John Rolph's address to the jury was on a much higher level of oratory than we are now accustomed to in the Courts. Its moving character can be judged from the following extract:—

"Long accustomed to persecution, the child of misfortune and the companion of troubles,—this last effort to crush him seems to awaken in him no emotion, for sad experience has taught him that nothing is too bold to be attempted against his property, his character, or his person, and sensibility being exhausted by continued grief leaves him without his native buoyancy and he would with passive confidence repose himself undefended upon the integrity of his Country. It has been long in fashion from motives the darkness of which I can scarcely penetrate, to cry down Randall; reduction from wealth to comparative poverty has exposed him to the scorn of the proud and the influential. Randall has tasted the bitterness of protracted imprisonment in a Foreign Gaol, and it is now proposed to make him suffer martyrdom in a life pillory. For seven years he was immured in a dungeon in Lower Canada, where he suffered privations, the details of which would make humanity shudder. Engaged as you are in the active and diversified pursuits of life, there is much to occupy your attention, and divert it from a thousand vexations which are attendant on the fate of the most fortunate of men; and even when business has lost its interest, or brought fatigue, nature opens her exhaustless stores

to invigorate the body, to delight the senses and to regale the mind; but in a gaol there is nothing to fill up a tedious existence; it is there almost worldless as the grave, no important trifles to incite desire, no prospects of success to animate with hope. Randall's care-worn soul, vacant of employment, and harrowed up by thought, was there left to turn upon itself for years to witness its own forlorn wretchedness, to mourn the prospect it had lost, and brood over the miseries to come. It was thought that the poverty and wretchedness brought upon him, would break down the spirit of the man; that nature, however buoyant, could not bear up against such complicated woes. Many, many a man, thus made a prey to accumulated sorrow, is doomed to hang the head of despondency and when ushered into prison every remnant of former vigour, that might promise a successful struggle, is soon exhausted by despair. But Randall survived the wreck of his property and the miseries of a prison".

The Jury was only out five minutes and returned with a verdict of "Not Guilty".

CHAPTER VII.

THE COMING OF COLONEL JOHN BY

In September 1826 Colonel By arrived on the banks of the Ottawa with full power and authority by Statute,—

> "to explore the Country lying between Lake Ontario or the waters leading therefrom and the River Ottawa, and to enter into or upon the lands or grounds belonging to any person or persons, bodies politic or corporate, and to survey and take levels of the same and to dig, get, remove, take, carry away, and sell earth, soil, clay, stone, rubbish, trees, roots of trees, beds of gravel or sand, or any other matters or things which may be digged or got in or out of any lands or any grounds",—

or in other words, By was to construct a canal from Kingston to the mouth of the Rideau River.

Up to this time the present City of Ottawa was almost a wilderness. Nearly the whole of the present Lower Town—and a great part of Upper Town—was an impenetrable swamp. What is now Parliament Hill was a densely wooded hemlock ridge. Two squatters, Berry and Firth, lived down near Richmond Landing. Nicholas Sparks had a few months previously taken up his abode on what is now Sparks Street, between Lyon and Bay Streets.

In the whole Township of Nepean, according to the Assessment returns for 1826, the year of By's arrival, there were 682 acres under cultivation. The style of agriculture may be judged from the fact that there was one stone house, one two-storied house built of squared timber, and two one-storied houses of similar construction. The rest were ordinary log houses. There were two shops to provide the inhabitants with the necessities of life, and those same inhabitants possessed forty-seven horses and eighty-three cows. The total assessment of the Township was £4291.12.0, and the taxes collected for the year amounted to about eighty-five dollars.

With the advent of Colonel By, however, came an influx of

LT.-COL. JOHN BY

settlers, sappers, miners and engineers, and an army of labourers to work on the canal and a number of tradesmen and merchants, always intent on pushing their trade to the extreme confines of civilization.

By the succeeding year 1827, there was a settlement in Lower Town almost entirely on Rideau and Sussex Streets, while a few houses had been built on what is now Wellington Street. The Government had erected barracks for the Regulars on the side of the present Parliament Buildings, and the chief building on Rideau Street was the Civilian Barracks, also erected by the Imperial Government for the accommodation of labourers. The above with a double row of houses extending from Rideau Street to the present Laurier Avenue Bridge constituted in 1827, the Village of By Town.

With this inrush of what appeared to be permanent settlers, came the realization that real estate in the locality should no longer be considered as fit only for farming purposes. As did the real estate promoters in the North West in the days before the war, so did Messrs. Sherwood and LeBreton realize that their property lying close to By Town would ultimately develop into one of great value, and they accordingly considered the question of subdividing and selling it in lots.

Before doing so, however, it was necessary that they should remove the squatters who had settled near Richmond Landing on their property. The constant disputes in the Courts had moreover cast doubt on their title to the property. This doubt was accentuated by reason of the very strong stand that Lord Dalhousie, Governor-General of Canada, took in connection with the squatters. Lord Dalhousie as early as 1822 in a letter to Berrie had said,—

> "I am more than ever confident that the purchase of Captain LeBreton is an illegal purchase of the Landing lot".

And again in 1828 he wrote to Mrs. Frith, the wife of the man who looked after the dock at Richmond Landing, and said,—

> "I am confident that he has no fair claim nor legal right to it, and on the part of the Government I have maintained the Firths in their possession and I think they ought to be maintained in it against the pretensions set up by Sherwood and LeBreton".

He further instructed Hon. Mr. John Beverley Robinson, the Attorney-General, to act for Firth in the action of ejectment which was being brought by Judge Sherwood and also caused him to notify Randall that,—

"If the sale was illegal for any cause stated by you and particularly for want of being clearly advertised, you have now an opportunity to ask the opinion of the Court upon it by enabling Firth to urge that objection against the plaintiff's title".

Mr. Thomas Radenhurst, a lawyer in Perth where the trial was to be held was appointed by the Attorney-General to act for him and Mr. Randall, handed over all his papers and documents to Mr. Radenhurst and instructed him. Just at this time the Court of Kings Bench was constituted by Chief Justice Sir W. Campbell and Judge Sherwood. Judge Campbell at this time was in London seeking a pension, and Judge Sherwood being the plaintiff, of course, could not sit as Judge. Accordingly the Executive Council appointed Mr. C. A. Hagarman, the Collector of Customs at Kingston, as a temporary Judge and Hagarman held the Assizes at Perth when the ejectment trial came on. What occurred at the trial is best told in Mr. Radenhurst's letter reporting to Mr. Randall,—

"Perth, 23rd August, 1828.

Robert Randall, Esquire,—

Dear Sir,—

I received your several letters with the documents enclosed respecting the suit of Doe ex dem Sherwood vs. Firth and Berrie, for part of the land formerly your property at Nepean Point. Many of the papers you sent were entirely useless, as the Judge would not permit evidence to show how the judgment in Boulton's suit was obtained. Nor could I, in addressing the Jury (as I wished) allude to that circumstance, but was entirely confined to what was put in evidence by the plaintiff, viz., the judgment, executions and sale, and even in this I was once or twice interrupted by the opposite Counsel and censured by the Court for what they considered exceeding my bounds.

I objected, as you requested I should, to the trial proceeding at all, which the Judge paid no attention to, as he

considered it was casting a censure on the conduct of the Court of Kings Bench which he could not listen to. The plaintiff did not produce any notice of the sale whatever, nor show that any such was given previous to the sale taking place. Upon this and some other points, I moved for a non suit, and the Judge reserved the points. We were also anxious to show that Colonel By required the property for the Government use, for the purpose of the Rideau Canal; this evidence the Judge refused receiving. In fact, he seemed unwilling that any point that could operate in yours or the tenant's favour should go to the Jury; and as the Jury at that Assize were persons little acquainted with their duty or with the Courts of Law, they implicitly followed the directions of the Court, which, in this case, was for the plaintiff and gave a verdict accordingly.

I remain,

Your obedient servant,

THOS. RADENHURST".

Firth, prompted by Randall, decided to appeal and then occurred what would to-day be considered nothing short of a traversty, but what at that time was a somewhat common occurrence and had been held by the Privy Council to be quite proper.

As explained, neither Campbell or Willis nor Sherwood could sit, so that when the appeal came up for hearing there sat Mr. Justice Hagarman alone as the whole Court, and he solemnly confirmed his own judgment at the Assizes.

This condition of affairs prompted the House of Assembly of Upper Canada to forward an address to His Majesty, bringing to his attention the condition of the Court of Kings Bench in the Province. Reference is made to Judge Hagarman alone constituting the Court of Kings Bench in the following words:—

"In Michaelmas Term last Mr. Justice Hagarman alone constituted our Court of Kings Bench, wherein he confirmed his own questioned judgment at the preceding Assizes, in a trial in which Mr. Justice Sherwood was interested; the

result of which trial involved a property of very great value, acquired through those judicial proceedings in the case of Mr. Randall, whose injustice has long been unavailingly an object of legislative relief and public sympathy. It is from such proceedings, such Courts, and such Judges, that the people desire to be relieved."

The judgment having been given in favour of Sherwood, LeBreton proceeded to subdivide into lots that portion of the property on the flat near the river, since known as LeBreton Flats, and called this little subdivision "The Town of Sherwood".

LeBreton's advertisement calling attention to the sale of these lots is interesting, it being the first advertisement of the sale of real estate at or near By Town.

"Town of Sherwood"

In consequence of the decision of the Court of Kings Bench held at Perth on the 20th instant, proving the subscriber's indisputable title to that valuable tract of land in the Township of Nepean, formerly known by the name of Richmond Landing (at present the Town of Sherwood) and adjoining to By Town, reports prejudicial to the title of the said land having been maliciously circulated by a personage of high rank and responsibility, have heretofore prevented the subscriber from disposing of said land. The situation is most beautiful and salubrious, being on the south side of the Chaudiere Falls, with the Grand Union Bridge abutting on the centre of the front and leading through the main street. It is replete with mill sites, and for commerce no situation on the River Ottawa can equal it. The subscriber is determined as much as possible to confine his sales to persons of respectability.

Britannia, Ottawa River.

26th August 1828".

JOHN LEBRETON.

It can be presumed that Captain LeBreton's determination to limit the sale of his lots to persons of respectability was based

on the motive which finds expression to-day in the restrictive building covenants that promoters of real estate subdivisions are accustomed to impose on their lots.

Colonel By on behalf of the Government purchased the property on which Messrs. Firth & Berrie had built their hotel, and these gentlemen were allowed to remain in possession.

If this little wooden tavern on the banks of the Ottawa lacked the architectural grandeur of the Chateau Laurier, its advertisement lacked none of the dignity of its pretentious successor,—

> "Firth & Berrie beg to make their most grateful acknowledgement for the very liberal patronage and support they have received from their friends and the public for the long period of nine years of which it will be their earnest study to merit a continuation by contributing to the utmost of their means and power to the comfort and accommodation of those who favour them with their countenance and support.
>
> "The romantic and highly picturesque situation of the Union Hotel, which commands a most interesting view of the mountains and scenery in the vicinity of Hull, the islands and banks of the noble Ottawa, the magnificent Falls of the Chaudiere, over which bridges are now about completed, and the works and improvements in Upper By Town will render this place a delightful retreat either to the delicate invalid, or scientific tourist.
>
> "The accommodations will be of a superior kind; the table will be furnished with the choicest viands that the season and the situation of the country will afford, and the wines and the liquors will be of the best quality that can be procured either at Bytown or from the most respectable dealers in Montreal.
>
> "Bytown, 1st September, 1828".

CHAPTER VIII.

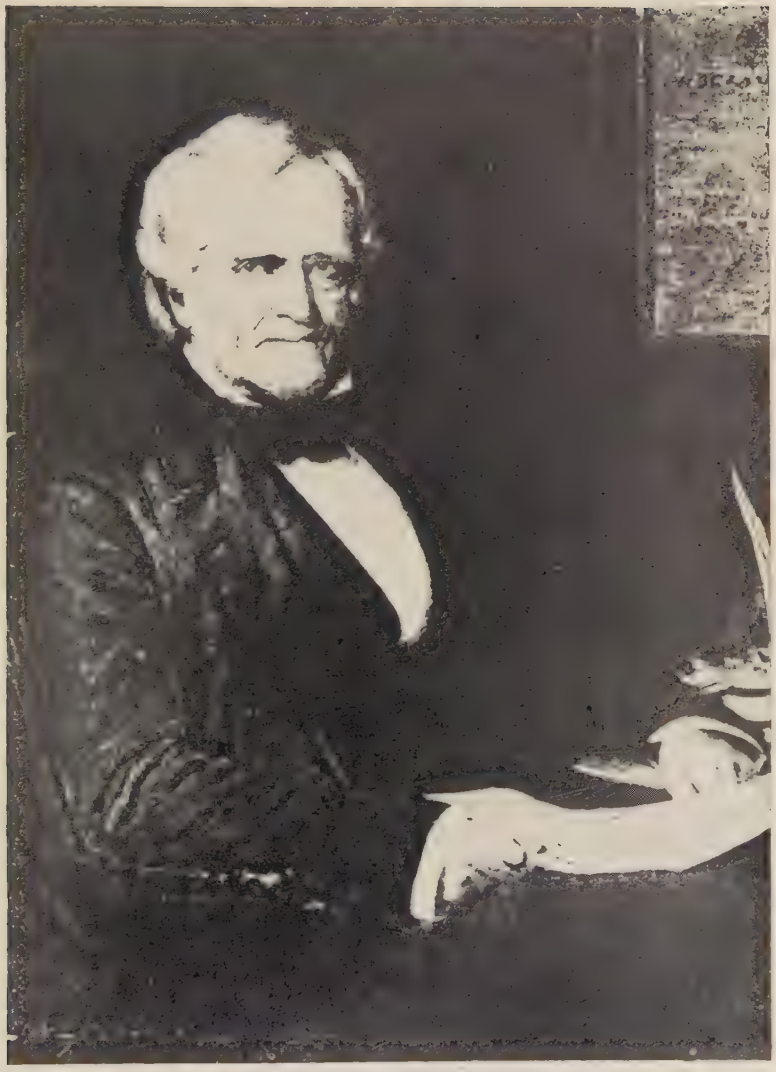
IN THE POLITICAL ARENA

The establishment of the little village of Bytown and the possibility of lot No. 40 becoming of great value added zeal to Randall's efforts to recover it. Not being successful in his endeavours to obtain satisfaction in the Courts he decided to appeal to the Parliament of Upper Canada for redress.

This was the period when the feeling between the Reformers and the Family Compact was daily growing more bitter. By 1825 the Reform Party had assumed a distinct form. The Reformers contended for a responsible executive and the Government opposed the contention with sarcastic contempt. There were various other grounds of dispute but this great question overshadowed and practically included them all. The struggle was of the usual political variety aimed at discrediting every move the Government made as a body as well as besmirching the reputation and standing of the individual and prominent members of the Tory Party. In this respect Randall's case lent itself very readily. Through it, the Courts and the Judiciary could be criticised for very apparent defects and failings. The Solicitor General could be painted in colours the reverse of flattering and the dramatic personnae illustrated that close relationship between the governing powers that prompted Mackenzie to dub them the "Family Compact".

The leaders of the Reform Party were Rolph, Bidwell, and the Baldwins, father and son. William Lyon Mackenzie, who raised the flag of revolt in 1837 was not then a member of the Assembly, but in the columns of his paper, "The Colonial Advocate", he was assailing the members of the Government with vigor, bitterness and aggression. The leaders of the Family Compact or Government Party were Hon. John Beverley Robinson, the Attorney General; Hon. John Henry Boulton, the Solicitor General; Hon. J. B. McCauley, Mr. Christopher Hagarman and others.

In 1826 a mob had invaded Mackenzie's printing establishment and wrecked it. Among those who had been active in



WILLIAM LYON MACKENZIE
Intimate friend, and Executor of the will, of Robert Randall

this outrage were Henry Sherwood, a son of Judge Livius P. Sherwood, Charles Richardson, a student in the office of the Attorney General, John Beverley Robinson and James King, a student in the office of the Solicitor General, Henry J. Boulton. The Government took no action against these perpetrators. It was at that time, when rankling under a sense of personal injury, that Mackenzie became acquainted with Randall. A warm and intimate friendship sprang up between them, and Lindsay in his "Life of Mackenzie", says that the connection produced its effect upon Mackenzie for life. He was touched by Randall's misfortunes and his sympathy for his friend found a ready outlet in attacks more vigorous than ever on the Solicitor General, H. J. Boulton. The fact that Hon. Mr. Boulton, Mr. Stuart, the Sheriff at Brockville, who sold the property, and Judge Sherwood who purchased it were brothers-in-law, and that Hon. J. B. McCauley, who had made the affidavit, that he did not know Randall's address and Judge Hagarman were also brothers-in-law, was not overlooked in defining his conception of the Family Compact. The failure of Randall to obtain relief, due to legal technicalities afforded the text of many editorials on the inadequacy of the Courts.

As explained before Randall was a member of the House of Assembly representing the County of Lincoln. A perusal of the Journals of the House shows that he was active and untiring in the performance of his duties. His name frequently appears as the mover and seconder of resolutions and a study of the votes indicates that he was a man of strong opinions who did not hesitate, when his judgment prompted him to oppose measures which his friends were in favour of.

Randall was a member of the Reform Party and was undoubtedly influenced in his decision to apply to Parliament for relief by his friends in the House of Assembly. Several bills were introduced and passed by the House of Assembly for his benefit, but these bills because of their political character failed to pass the Upper House. It must be admitted from a study of these bills passed by the Reformers in the Lower House and thrown out by the Tories in the Upper House that the Reform Party were as much intent on making political capital out of

attacks on Boulton and the Government as they were in obtaining relief for Randall.

In the session of 1828, on the eve of a General Election for the Assembly, Randall introduced his first petition for relief. A special committee to enquire into the complaints set forth in his petition was appointed, composed of B. C. Beardsley, the senior member of the Law Society, Hon. John B. Robinson, the Attorney General, Mr. M. S. Bidwell, Dr. John Rolph, who had defended Randall when he had been tried for perjury in 1825, and Capt. John Matthews.

John Beverley Robinson was the leader of the Tory Party and a warm and intimate friend of the Solicitor General, Henry John Boulton. The Chairman of the Committee, Mr. Beardsley, was of moderate views and not prominent in any of the controversies which agitated the public mind at this period. The other three members were strong active and vigorous Reformers. Rolph and Bidwell were leaders of the Party. Capt. John Matthews made up in bitterness what he lacked in ability. He was a retired army officer and had been in receipt of a pension. In 1825 he shed his Tory clothing and espoused the Reform cause. On the New Years Eve of 1826, at a convivial gathering, he had loudly called on the orchestra to play "Yankee Doodle" and "Hail Columbia" to the great scandal of the ultra loyal Tories then present. For this he was ordered to leave the Province, and on his refusal his pension was stopped.

The Committee sat for several days examining witnesses. Evidence was given in regard to the circumstances attending the giving of the promissory note for £25, to Boulton immediately before Randall's case had been called at Niagara. An effort was made to show that Boulton had obtained it fraudulently and that the sale of the lot was not properly advertised and was sold at much below its value. Much evidence was also given dealing with the method by which Boulton obtained the judgment against Randall. The Committee in due course made its report to the Assembly reviewing the facts in connection with the giving of the promissory note, and the mortgage, the obtaining of the judgment, the sale and the subsequent efforts of Randall in the Courts. The closing paragraphs of their report were as follows:—

"Mr. Boulton has received his principal and interest upon the bond and note. The fee of the land mortgaged is also in him and there is no Court of Chancery to interfere. The land sold at Sheriff's sale under this judgment is undoubtedly most valuable and it appears to have been sold before the Petitioner knew there was a judgment against him. Part of the land sold under the judgment is owned by the Hon. Mr. Justice Sherwood, brother-in-law to Mr. Boulton. There is, however, no evidence to show that Mr. Boulton was concerned in the sale or the purchase.

"Your Committee have to remark that Mr. Boulton was conducting a cause for himself against his own client; and when they consider the nature of the debt, the great and multiplied irregularities by which the judgment and executions were obtained, the great value of the property sacrificed, and the expensive and fruitless endeavours of the Petitioner to obtain a reversal of the proceedings, they do not hesitate to recommend relief. Independent of the interest of one of the Judges it appears that the Court of Kings Bench, if they set the proceedings aside, could not afford adequate relief and therefore your Committee have reported a Bill enabling the Honourable Mr. Justice Willis to enquire into the matters alleged in the petition and to do justice between all the persons interested. The Chief Justice is not included in the Bill, as it is publicly reported that he is about to visit England; and under such circumstances, the objects of the measure might be defeated, and the ends of public justice not be answered, if he were included".

The report was signed by the Chairman, Mr. Beardsley.

The Bill reported by the Committee appointed Hon. Mr. Justice Willis a Commissioner to enquire into the truth of Randall's statements, giving him power to summon witnesses to be examined in open Court and empowering him,—

"to make such decrees for either the confirmation or reversal of the said judgment and of the proceedings thereupon"

as he should deem necessary for the doing of justice between all parties interested in the matter.

No better choice in some respects could have been made of a Commissioner than Mr. Justice Willis, and no worse in some others. He was an English Barrister of the Equity Bar, who had been sent to Canada as a Judge of the Kings Bench in the Autumn of 1827, the intention being ultimately to establish a Court of Chancery in the Province, in which case Willis would have been made Chancellor of it. To appoint an Equity Judge fresh from England as a Commissioner in such a case as Randalls, would appear to have been excellent, but unfortunately Willis was a man totally devoid of prudence, judgment or tact. He had been in Canada only a short time when he and Attorney General Robinson quarrelled and as Robinson was high in favour with the Government, Willis immeliately incurred the dislike and disapproval of the Tory Party. Shortly after the House rose he had a most unseemly row with the Attorney General when he undertook in open Court to lecture this personage on how to conduct the affairs of his office, and in July of the same year, after a disgraceful scene between him and Judge Sherwood, he was dismissed by the Executive Council and returned to England. Judge Willis, naturally , was always in high favour with the Reformers.

The Bill was reported to the House on the day before adjournment when a mass of legislation was being rushed through. It had its first and second reading without a vote in the afternoon. The House sat until eight in the evening, adjourned for an hour, and gave the Bill its third reading at nine o'clock. A vote was taken on this reading and the Bill carried by a majority of two. Hon. John Beverley Robinson voted against it. Beardsley, the Chairman of the Committee, voted for it, but the other members of the Committee were not present. Randall did not vote. The Bill was immediately sent to the Upper House where it was defeated.

The discussion in the Assembly and the taking of evidence by the Committee had, however, served the purpose. The Solicitor General Boulton was painted, in the ensuing election as a villainous lawyer, who, by threats and duress had obtained a promissory note from a penniless client and then after deserting him had secretly and deceitfully under color of law seized a valuable estate and procured one brother-in-law (the Sheriff)

to sell it to another brother-in-law (Judge Sherwood) for a fraction of what it was worth. Needless to say the story was much exaggerated. There was absolutely nothing to show that Judge Sherwood had acted in collusion with Boulton, or that Boulton had purposely done anything with the intent of hiding the proceedings from Randall.

In the summer of 1828 the elections took place and William Lyon Mackenzie was elected a member of the Assembly. In his first session in 1829 he and Dr. Baldwin introduced the Bill of the previous session, but instead of naming Judge Willis, who by this time had been dismissed, they petitioned for the appointment of Louis Joseph Papineau, the Speaker of the Lower Canada Assembly, as the Commissioner to make the enquiry. If the previous bill had savored of politics, this one clearly was introduced for political purposes. Papineau as the leader of the French Reformers in the Lower Province, had for years kept his Province in a ferment against the English governing party and was in 1837 to fan the flame of discontent into open rebellion. There was not the slightest possibility that Boulton's Tory friends in the Upper House would permit such a bill to become law. The Bill passed the Lower House practically unanimously, 31 yeas and 2 nays. The Legislative Council refused either to amend or pass the bill. They simply threw it out assigning no reasons.

Apparently the Upper House had no personal feeling against Randall, in twice nullifying the efforts made to furnish him relief, for in the following session (1830) in

> "An Act to grant a further loan to the Welland Canal Company and to regulate their further operations"

the Assembly appointed Robert Randall a Commissioner to examine the canal and report for the information of the Legislature on the condition of certain features of this great undertaking, at the same time providing that Randall was to be remunerated for his services. This Bill passed the Upper House and Randall made two very complete and exhaustive reports on the subject. He was subsequently made a Director of the Welland Canal Company.

In 1829 John Beverley Robinson not displeased to be rid of the turmoil of political life was appointed Chief Justice of

the Court of Kings Bench and Henry John Boulton was appointed Attorney General in his stead. Christopher Hagarman who had been a temporary Judge was appointed Solicitor General.

An election took place in 1831 resulting in a decisive defeat for the Reform Party. Rolph was re-elected, but all Randall's other friends were defeated. Mackenzie, Bidwell, and Dr. Baldwin were no longer members. It was therefore useless to attempt anything further in Randall's case for the present.

In 1833 Mackenzie while in England, succeeded in having Boulton as well as Hagarman dismissed from their positions by the British Government. Boulton was subsequently appointed Chief Justice of Newfoundland ,but he soon embroiled himself with a large and influential section of the population, whereupon the Imperial Government relieved him of that charge also.

In 1834 Robert Randall died, having first made his will wherein he appointed his intimate friend, William Lyon Mackenzie, his executor. One can reasonably conclude that had Randall been alive when the rebellion broke out in 1837 he would have been one of the leaders, and probably, owing to his strength of will and determination, the uncertainty which marked the attitude of the rebels as they delayed at Montgomery's tavern, would not have been so prolonged. The attack on York would have been pressed vigorously and quickly and the town might have fallen into the possession of Mackenzie and his cohorts.

A general election took place in October 1834 and the Reform Party succeeded in electing once more a majority in the Assembly. One of Mackenzie's first acts when the House met in 1835, was, as Executor of Randall, to petition the House to pass an Act similar to those previously adopted, giving relief to Randall's heirs. The notice of this Bill, however, in the Upper Canada Gazette was defective and the Bill under the rules of the House was thrown out.

During the following session 1836, Mackenzie nothing daunted, introduced a Bill for the fourth time. It was similar to the preceding Bills but appointed Hon. R. A. Tucker, who had been at one time Chief Justice of Newfoundland and a man of strong conservative opinions as the Commissioner. This Bill did not

savor so much of politics as the previous ones. H. J. Boulton was no longer in politics. Judge D'Arcy Boulton was dead and Tucker was unobjectionable. No doubt Mackenzie was sincerely desirous of helping Randall's heirs. The usual Committee was appointed, who, having heard the usual evidence reported in favour of the Bill. Mr. Watters, the member for the Bathurst District, in which Bytown then was, stated when being examined, that the property was then worth at least £20,000. The Committee in its report made this pathetic reference to Randall:—

> "In 1834 Mr. Randall died, having spent nearly seven years of his life in a prison, and the last thirteen years of it in a series of vain and fruitless efforts to obtain in Upper Canada that tardy justice which the defective organization of our judicial institutions, the personally interested situation of some of our Judges, and the character and composition of the Legislative Council denied him".

The Bill passed the House of Assembly, but met the usual fate at the hands of the Tories in the Upper House.

In the following year Mackenzie raised the flag of revolt and many of the Reform Party who had been active for Randall were scattered, and the claims of Randall's heirs were forgotten by most people.

Mackenzie's loyalty to his old friend, however, remained staunch and true even in exile.

In 1838 he had some correspondence with Mr. Millard Fellmore (afterwards President of the United States) who at the time was practising law in Buffalo and who had been retained by the Randall heirs in the United States to endeavour to obtain some relief for them.

Years later when all the circumstances had been forgotten, when the principal characters were all dead and the old conflicts between the Reformers and the Family Compact had become matters of history, William Lyon Mackenzie introduced into a new Assembly in which the French members from Lower Canada had the control, a petition for the adoption of a Bill similar to those outlined above.

Mackenzie had been pardoned in 1849 and returned to Canada during the summer of that year. In 1851 a general

election took place at which he was elected to the Assembly and in his first session he introduced a petition for the relief of the Randall heirs, in which he set out the history of Randall's troubles, attacked his old enemy, Boulton, and argued the inequitable character of the legal proceedings with the same vim and bitterness that had characterized his previous attitude. The returned exile had not realized the tremendous transformation that had taken place in the political world of Upper Canada. Thirty-two years had passed since the sale to Sherwood and LeBreton and the politicians of the day were much more concerned over the "Clear Grit" problem than they were in rectifying the misfortunes of a contemporary of their fathers. Mackenzie was obliged to content himself with an order of the Assembly that his petition be printed.

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